

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

CBS BROADCASTING INC. D/B/A WBBM-TVⁱ

Employer

And

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1220 AND INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, JOINTLY

Petitioner

Case 13-RC-20838

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire recordⁱⁱ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.ⁱⁱⁱ
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{iv}

All full-time and regular part-time graphics employees, including graphic artists and graphic designers, employed by the Employer at or for its facility currently located 630 N. McClurg Court, Chicago, Illinois; excluding all other employees, managers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local 1220 and International Brotherhood of Electrical Workers, AFL-CIO, jointly.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before October 7, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by October 15, 2002.

DATED September 30, 2002 at Chicago, Illinois.

/s/Elizabeth Kinney

Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing and in their briefs have been carefully considered. The Employer's post-hearing Motion to Correct Transcript is granted.
- 3/ The Employer is a corporation engaged in the business of television programming.
- 4/ The Petitioner seeks to include all full-time and regular part-time design directors, lead graphic artists, graphic artists and graphic designers employed by the Employer at or for its Chicago, Illinois facility; but excluding all other employees, with the unit of technicians it currently represents.¹

The Employer is a television station located in Chicago Illinois. It broadcasts national CBS programming, as well as locally produced shows, which primarily consist of news programs. The International Brotherhood of Electrical Workers currently represents the technicians employed by the Employer. These technicians are covered by a contract between the International and CBS Broadcasting Inc., for all technicians at various CBS stations. Here, the International and one of its locals, Local 1220, (collectively the "Petitioner") jointly seek to represent the above-described unit of graphic artists.² In addition, the Petitioner requests a self-determination election wherein, if the graphic artists elect to be represented by the Petitioner, that they be included in an overall unit with the technicians. While Local 1220 does not itself negotiate or sign the technicians collective-bargaining agreement, the International bargains on behalf of, among others, Local 1220, and it is Local 1220 that administers the contract for the Employer's Chicago technicians.

The Employer argues that the technicians and the graphic artists do not enjoy sufficient community of interest to warrant their inclusion in a combined bargaining unit. It further asserts that it would be inappropriate to sanction the possible addition of the Chicago

¹ The petition originally requested a unit including Art Directors. However, at the hearing, the Petitioner amended the petition to remove the reference to Art Director and to include the position of Lead Graphic Artist. The Employer objected to this amendment insofar as it claimed that no such position exists at the Employer. The parties nonetheless made clear at the hearing that the individual holding the disputed position is Neal Weisenberg and presented evidence regarding the appropriateness of including him in the unit. Thus, notwithstanding the question of his title, I will consider whether he is appropriately included in the unit. Moreover, while I find Weisenberg's title to be Art Director, as urged by the Employer, I agree with the Petitioner that his title shall not be controlling. Because the issue is his supervisory status, the proper consideration is whether the functions and authority of the individual, irrespective of title, meet the criteria defined in Section 2(11) of the Act. *Mack's Supermarkets*, 288 NLRB 1082 (1988).

² The Local 1220 representative amended the name of the Petitioner at the hearing to include the International as a joint petitioner. The Employer objected to this at the hearing, and the hearing officer overruled the objection. At the hearing and in its brief, the Employer argues that the International has not authorized the Local representative to add the International to the instant petition. However, the record contains a letter from International Vice President Lawrence Curley that states, in relevant part: "IBEW Local 1220 is authorized to seek representation of the Graphic Artists at WBBM TV as part of the National Agreement and also to seek to combine the new unit with the existing unit of technicians and others currently represented by the International Brotherhood of Electrical Workers." In addition, the Employer has presented no evidence to suggest that Local 1220 representatives were not given the express authority to add the International's name to the petition. Accordingly, I reject the Employer's claims to the contrary and re-affirm the hearing officer's overruling of the Employer's objection.

station's graphic artists to a nationwide unit of technicians. The Employer also claims that Director of Design, Abel Sanchez, and Art Director, Neal Weisenberg, are supervisors within the meaning of the Act and should, therefore, be excluded from the unit.³

The Petitioner asserts that the graphic artists are appropriately included in a single unit with technicians. The Petitioner relies primarily on the fact that graphic artists occasionally do one type of work, editing that is covered by the technicians contract and get paid under the national technicians' contract when they perform this work. The Petitioner also points to the fact that the graphic artists and technicians receive the same benefits, as dictated by the Employer's policies, as the technicians. In addition, the Petitioner claims that the Employer has failed to meet its burden of demonstrating that the Director of Design and the Art Director are supervisors. The Petitioner, therefore, argues that these positions should be included in the unit.

I find that the petitioned-for unit is not appropriately included in a unit with the nationwide technicians' unit for several reasons, including the lack of a sufficient community of interest between these two groups of employees. Therefore, although I find that the graphic artists are an appropriate unit themselves, they would not appropriately be included in a multi-site unit of technicians. Accordingly, a self-determination election is unwarranted. I further find that the Director of Design is a supervisor within the meaning of the Act and must, therefore, be excluded from the unit. However, I find that there is insufficient evidence upon which to conclude that the Art Director is a statutory supervisor. Accordingly, he will be included in the unit.

FACTS

A. Background – Structure of the Employer

The petitioned-for employees all work in the Employer's graphics department. The graphics department and the promotion department jointly comprise the creative services department. The creative services department is one of the seven departments that are overseen by Fran Preston, the Employer's Vice President/Station Manager/Program Director. The other departments that report to Preston include: engineering, programming, website, research, public relations and community services. Preston, in turn, reports directly to the Vice President and General Manager, Joe Ahern, who oversees all operations at the Employer.

The technicians work primarily in two departments: the engineering department and the news department. The top position in the engineering department is the director of broadcast operations and engineering. Next is the Engineering Director, Mike Wilken, and the Scheduler, Corrice Collins. Next are various managers, who the technicians report to directly. These positions are not included in the technician unit currently

³ The Employer also argues that under the terms of the collective-bargaining agreement dealing with technicians, the only way to expand the unit is through mutual agreement by the parties. Given my conclusions on the remaining issues, I need not pass on this argument.

represented by the Petitioner (International). The technicians in the engineering department, therefore, appear to be supervised within that department by the managers. As noted above, the engineering department is overseen by Preston, who, in turn, reports directly to the Employer's general manager. There are approximately 50 technicians in the engineering department.

The remaining technicians work in the news department. The head of the news department, like Preston, also reports directly to the general manager. Within the news department there are two assistant news directors, to whom the technicians report. Thus, it appears from the record that the technicians in the news department are supervised by the news directors. In addition, however, the record indicates that within the news department there are executive producers who, according to Preston, supervise the particular newscast they are producing. Thus, the position in the news department that does the actual day-to-day supervision of technicians is not entirely clear. However, their supervision is clearly within the news department, as opposed to those technicians who work in engineering, who are supervised by engineering department managers. There are approximately 75 technicians in the news department.

B. Scope of Unit

The work of the graphics department consists mainly of creating on-air still graphics. This requires using various computer programs and equipment to manipulate pictures, typically still frames from videotapes, to create graphics. These graphics are then used as background images to enhance news stories and sales promotions. The videotaped material used for these graphics is usually shot by a technician. After the graphic is created by the graphics department, it is saved in the "still store system" so that technicians, working on identical workstations as the graphics employees use, can access the graphic via computer network. The technician in the control room is then able to use the graphic for news stories, promotions, sales projects and special projects.

Unlike the graphic artists and graphic designers who create the graphics used for a given project or news story, the Director of Design and the Art Director are currently working on re-designing all of the overall station graphics that make up the look of the station. To do this work, the Director of Design Abel Sanchez and the Art Director, Neal Weisenberg, use the same equipment that the other graphics department employees use for their work. However, the remaining graphics employees are not working on the redesigning of the overall station graphics. In addition to Sanchez and Weisenberg, there are six employees employed by the Employer as graphic designers and graphic artists.

Work assignments for graphic artists and designers' employees generally come from the Director of Design. However, there is an understanding in the department that one employee is responsible for news production each day. The assignments for that employee come from a news producer.

The term technician covers a broad array of employees at the Employer. As the name suggests, it includes virtually all the Employer's employees who perform work that is of a technical nature. Thus, it includes those employees that: operate studio and field video

cameras; maintain equipment, both in the studio and in other areas, such as where the antennas are located; operate robotic equipment in the newsroom; work as editors; maintain broadcast feeds and send out feeds, and employees that drive satellite trucks. While in practice, particular technicians have, or develop, expertise in certain technical areas, the collective-bargaining agreement covering technicians does not specifically provide for these differences. A technician who works mostly as an editor is therefore theoretically interchangeable with one who maintains off-site antennas or drives a satellite truck.

Graphics department employees sometimes work with technicians. For example, Graphic Artist/Designer Sean Maloney testified that he “occasionally” works with technicians who are editors when implementing graphics into a piece. Maloney also testified at length about the collaborative or team concept for work performed for the Employer. Specifically, depending on the work assignment, a graphics employee must collaborate with a variety of employees to complete a task. A graphics employee may, for example, work closely with a news producer or sales producer in order to complete an assignment. Likewise, promotion managers and producers will work collaboratively with graphics employees and technicians who are editors to determine how to execute a piece and how it will be edited.

There are some similarities in terms and conditions of employment between technicians and graphic artists and designers, including one common work assignment: editing, which is described below. Their benefits, such as health insurance, are dictated by the Employer’s policies that cover all employees and are, therefore, the same for both groups. In addition, neither group wears a uniform. Both groups work staggered shifts, although the exact times of those shifts is not clear from the record.

The only work that both the graphic employees and the technicians perform is editing. This involves manipulating video images, where full motion video is the input as well as the output. Typically editing is performed by technicians in the control room. However, if, for example, the editing request comes too late for a technician to do the work because of production deadlines, a producer may ask a graphics employee to do it. When graphics employees perform editing work, they are able to claim the time spent performing this work under the technicians’ collective-bargaining agreement and, therefore, get paid under that agreement.⁴ Since technicians have higher wage rates,

⁴ The Employer and various unions have established a practice where an employee who is a member of one union but is being asked to perform work falling under the jurisdiction of another union must become a member of both unions. Such an employee is referred to as a “hyphenate”. A hyphenate is then paid under the contract for the union having jurisdiction over the work he or she performed. Until about 2000, graphics employees were represented by the United Scenic Artists Guild. The Employer, therefore, had an agreement with that union whereby graphics employees had to become hyphenate members of Local 1220 to perform editing work. However, since about 1997, the parties mutually agreed to cease requiring that new graphics employees become hyphenates to do editing work. The reason for this change is not in evidence. It appears from the record, however, that this agreement has not resulted in new employees not, in fact, becoming members of Local 1220 and receiving pay under the technicians’ agreement. Maloney, who has only worked at the Employer since 1999, testified that he is a member of Local 1220, and when he does editing, he gets paid pursuant to the technicians’ agreement.

discussed more fully below, this procedure results in additional wages for the graphics employees. Maloney, the only graphics department employee who testified, stated that lately he has been claiming pay under the technicians contract for between two and four days a week. However, he did not know whether or to what extent other graphics employee were claiming time under the technicians' agreement for doing editing work.

In addition to the differences in supervision, which will be discussed later, there are various other differences in the terms and conditions of employment between the two groups. The graphic artists and graphic designers typically have advanced fine arts degrees, whereas technicians typically have an engineering-type background and education. The technicians earn roughly \$15,000 to \$20,000 more per year than graphic artists and designers. The graphics department employees have their own separate work area at the Employer's facility. Technicians, on the other hand, work in various locations at the Employer's facility, such as the studios and the control room, as well as in the field. Moreover, with few exceptions, technicians only work in the graphics department when they are assigned to service malfunctioning equipment or to set up new equipment. Finally, there is no evidence of interchange among technicians and graphics employees.

C. Supervisors

The head of the graphics department is the Director of Design, Abel Sanchez. The Director of Design is responsible for the on-air look of the station. The position reports to the Director of the creative services department, Damon Bryant. Sanchez has only worked for the Employer since mid-August, 2002; thus, his precise responsibilities do not appear to be clearly defined yet. The record contains only minimal evidence regarding the duties of his predecessor, Joan Bowman. Nonetheless, according to Fran Preston, Sanchez oversees the graphics department. This includes originating special projects and assigning them to graphic artists and graphic designers. In addition, Preston testified that Sanchez is expected to deal with disciplinary issues within the department. However, he has not issued any discipline since he has been at the Employer. According to Preston, Sanchez has the ability to authorize overtime work in his department without consulting with other Employer representatives.

Sanchez was also involved in the recent hiring of a graphics department employee, Josh Nard. Nard had previously been a per diem employee within the department who was hired within the last few weeks to work full-time for the Employer. However, the record does not reveal the extent of Sanchez's involvement in the decision to hire Nard. According to Preston, though, Sanchez determined Nard's starting salary. The record does not provide any insight into what factors he used for this or the extent to which he used independent judgment in doing so.

Although Sanchez is also responsible for scheduling graphics employees, according to Preston, this is not his main job and it is likely that the "number two person" in the department, Art Director Neal Weisenberg, will do the scheduling. No details were provided regarding the scheduling process. Thus, it is unclear whether the scheduling function requires the use of any independent judgment, as opposed to merely assuring

coverage for each of the shifts. Graphic Artist/Designer Maloney testified that it is Weisenberg who has been doing the scheduling for the past several weeks, but again, no details regarding this procedure are in the record.

Weisenberg, like Sanchez, has only worked for the Employer since mid-August, 2002. Preston testified that Weisenberg's duties, in addition to attending managers meetings, would also include managing projects assigned to graphic artists and graphic designers. The requirement of managing a project, however, was not provided. In addition, Weisenberg is expected to fill in for Sanchez when he is absent, such as on vacation or on sick leave. Maloney testified that he saw Weisenberg working on one of the graphics computer workstations one day, and other than that has mainly seen him attending meetings with Sanchez. These meetings, however, appear to be related to the major project of re-designing the entire look of the station. Both Sanchez and Weisenberg are classified as exempt under the Fair Labor Standards Act.

RELEVANT LEGAL PRINCIPLES

A. Scope of Unit

When an incumbent union attempts to add a group of unrepresented employees to its existing unit, and no other labor organization is involved, the Board may conduct a self-determination election. If a majority of the employees vote against representation, they are considered to have indicated a desire to remain unrepresented. However, if a majority vote for the petitioner, they are deemed to have indicated their desire to become part of the existing unit, represented by the incumbent union. As a precondition, it is necessary to determine whether employees to be included in the existing unit constitute an identifiable, distinct segment so as to establish an appropriate voting group as well as whether they share a community of interest with the existing group. *Beverly Health and Rehabilitation Services, Inc., d/b/a Beverly Manor – San Francisco*, 322 NLRB 968, fn. 12 (1997); *Warner Lambert Co.*, 298 NLRB 993, 995 (1990); *Phototype, Inc.* 145 NLRB 1268 (1964).

Accordingly, the initial question is whether the petitioned-for employees constitute a distinct group. If so, then it must be determined whether they share a sufficient community of interest with the group that is already represented by the Petitioner (International). To make this determination, the Board weighs a variety of "community of interest" factors. Thus, the Board stated in *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962) that the following factors must be considered:

"difference[s] in the method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications; training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact with other employees; lack of integration with work functions of other employees or interchange with them; and the history of bargaining."

B. Supervisory Status

Section 2(11) of the National Labor Relations Act sets for the test to determine supervisory status. It defines supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is of a not merely routine or clerical nature, but requires the use of independent judgment.

The exercise of any one of these types of authority is sufficient to confer supervisory status; however, it is well settled that such authority must be exercised “with independent judgment on behalf of management and not in a routine or sporadic manner” (Citation omitted), *International Center for Integrative Studies/The Door*, 297 NLRB 601 (1990). The exercise of some supervisory authority “in merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status on an employee.” (Citation omitted). *Bowne of Houston, Inc.* 280 NLRB 1222, 1223 (1986); *Clark Machine Corp.*, 308 NLRB 555 (1992). In each case, the differentiation must be made between the exercise of independent judgment and the routine following of directions; between effective recommendation and the forceful suggestion; and between the appearance of supervision and supervision in fact. See *Chevron Shipping Co.*, 317 NLRB 379 (1995); *J.C. Brock Corp.*, 314 NLRB 157 (1994).

The burden of demonstrating supervisory status rest on the party seeking to establish that status. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Alois Box Co.*, 326 NLRB 1177 (1998). Moreover, in the event that “the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Conclusionary evidence regarding the possession of section 2(11) indicia, whether the evidence is contained in job descriptions, *Crittendon Hospital*, 328 NLRB 879 (1999), or testimony, *Sears Roebuck & Co.*, 304 NLRB 193 (1991), is insufficient to establish supervisory status. Thus, where there exists general conclusionary evidence that individuals are responsible for supervising, directing, or instructing others, such evidence, standing alone, is deemed insufficient to prove supervisory status because it does not shed light on exactly what is meant by such general words or whether an individual engaging in those activities is required to exercise independent judgment.

ANALYSIS

Unit

Here, it is clear that the graphics department employees constitute a distinct, identifiable group. No party takes a contrary position. Next, the community of interest factors between the petitioned for group and the existing unit must be analyzed. I find that the differences in these factors between technicians and graphics employees outweigh the similarities. Accordingly, I find that the graphics department employees would not appropriately be included in the existing technicians' unit.

Technicians make substantially more per year than graphics employee. Significantly, contrary to the cases cited by the Petitioner, such as *Space Mark Inc.* 325 NLRB 1140 (1998), technicians have separate supervision. The graphics department employees report to the director of design, while the technicians report to managers in the engineering department and to the assistant news director and producers in the news department. Technicians have engineering or technical backgrounds, whereas the graphics employees generally have fine arts training and must possess some artistic aesthetic ability. While graphics employees have some contact with technicians who are editors, there is only limited, if any, contact with other technicians. Graphics employees work in the graphics department, whereas technical employees work in other areas, including at off site locations, such as in the field shooting video footage or at antenna sites. Although some technicians have direct contact with graphics employees, such as editors and technicians assigned to fix equipment in the graphics department, this does not appear to be particularly frequent. Finally there is no evidence of interchange among the two groups, nor is there common collective-bargaining history.

Given these differences, and despite the Petitioner's claims to the contrary, I find that the similarities between these two groups do not warrant the conclusion that they share a sufficient community of interest to appropriately include in them in the same unit. The fact that they work similar staggered shifts, the details of which were not provided, is not sufficient. Regarding functional integration, I find that this factor does not weigh substantially in favor of including the two groups in a unit. Although technicians in the control room access and broadcast the graphics created by the graphics employees, this level of integration is comparable to the integration between that of the news reporter and writer who use the graphics to enhance their stories. Similarly, I find that the fact that graphics employees occasionally perform one function in common with technicians, namely editing, is an insufficient basis upon which to conclude that the two groups share a community of interest to appropriately include in them in the same unit. Moreover, the technicians' unit is nationwide in scope, rather than local, as is the graphics department. In sum, I conclude that the Employer's graphics employees, including graphics artists and graphic designers, constitute an appropriate unit. However, because the employees already represented by the Petitioner (International) lack a sufficient community of interest with these employees, I find that a self-determination election pursuant to *Globe Machine & Stamping Co.* 3 NLRB 294 (1937), as requested by the Petitioner, is not appropriate in this case.

Supervisors

With respect to the supervisory issues, while there is no evidence that Director of Design, Abel Sanchez, uses independent judgment in scheduling employees, the record demonstrates that, among other duties, Sanchez has the independent authority to approve overtime and he assigns work to graphics employees. He also participated in a recent hire for the graphics department and set the salary of the individual. On the other hand, there is no evidence that Weisenberg exercises any of the Section 2(11) indicia set forth in the Act. Contrary to the Employer's claim, the mere fact that the Employer classifies an employee as exempt for the purposes of overtime does not confer supervisory status on the employee. Accordingly, the Art Director Weisenberg will be included in the unit found appropriate, while Director of Design Sanchez will be excluded from the unit as a supervisor.

Since the Petitioner indicated at the hearing a willingness to proceed to an election in a unit other than what it petitioned for, I hereby direct an election to determine if the employees in the above-described unit wish to be represented by the Petitioner.

There are approximately seven employees in the unit found appropriate.

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440-1780-4000
177-8520-0100 et seq.
